

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT THIKA**

**ELC CASE NO E046 OF 2025 (OS)**

**IN THE MATTER OF THE LIMITATION OF ACTIONS ACT**

**AND**

**IN THE MATTER OF THE LAND ACT**

**AND**

**IN THE MATTER OF THE LAND REGISTRATION ACT**

**AND**

**IN THE MATTER OF THE LAND PARCELS KOMOTHAI/  
KIAMBURURU/171 AND KOMOTHAI/ KIAMBURURU/T.156**

**BETWEEN**

**ISAAC NJUGUNA MWANGI ..... 1<sup>ST</sup> PLAINTIFF/  
APPLICANT**

**HANNA WANGARI MWANGI ..... 2<sup>ND</sup> PLAINTIFF/  
APPLICANT**

**JANE WAMBUI MWANGI ..... 3<sup>RD</sup> PLAINTIFF/  
APPLICANT**

**MARY WANJIRU MWANGI ..... 4<sup>TH</sup> PLAINTIFF/  
APPLICANT**

**MICHAEL KARANJA MWANGI ..... 5<sup>TH</sup> PLAINTIFF/  
APPLICANT**

**PETER NJANE MWANGI ..... 6<sup>TH</sup> PLAINTIFF/  
APPLICANT**

**=VERSUS=**

**ELIJAH KARIUKI KARANJA** (*Sued as the administrator of the estate of  
Karanja Njuguna Karanja*) ..... **DEFENDANT/  
RESPONDENT**

## **RULING**

1. Following the delivery of the ruling dated 29<sup>th</sup> July 2025 in which the court found the Respondents culpable of disobeying the court order of status quo dated 18<sup>th</sup> March 2025, the Respondents filed a Notice of Motion dated 8<sup>th</sup> August 2025 seeking the following orders:
  - a) *That the orders for conviction issued on the 29<sup>th</sup> day of July 2025 be reviewed set aside, vacated and/or cancelled.*
  - b) *That the sentencing and mitigation scheduled by the court on the 24<sup>th</sup> day of September 2025 be stayed /arrested awaiting the hearing and determination of the application.*
  - c) *That there is an error, a mistake on the face of the order resulting into conviction on the contempt of court by this Honourable court.*
  - d) *That costs of this application to be provided for.*
2. The application is premised on the grounds set out on the face of the Notice of Motion and the supporting affidavit of Elijah Kariuki Karanja in which he deponed that the order served upon him was to the effect that the status quo prevailing in the register and on the ground with respect to land title number KOMOTHAI/KIAMBURUR/T.156 and 177 as at the date of the order be maintained pending the hearing and determination of the application inter partes.
3. He deponed that the record of the property known as KOMOTHAI/KIAMBURU/T.177 had not been provided before the court to confirm

the ownership. He pointed out that there was an error describing the said parcel number as the correct no. is KOMOTHAI/KIAMBURUR/T.171 and not 177 and this amounts to an error on the face of the record.

4. He urged the court to say the sentence and vary the conviction on contempt or set aside the order as it was based on a property not known to him.
5. He informed the court that the parties had met at the office of the area chief on 28<sup>th</sup> October 2024 and the Applicants had requested for a grace period of three months to enable them vacate the suit property but instead of vacating, they filed this suit.
6. He was of the view that this suit was filed in bad faith to frame him as an evil person yet they had agreed on the way forward as a family.
7. He deponed that he was an elderly law-abiding citizen who had never committed any crime and he was willing to keep peace with the Applicants.
8. The application did not go unchallenged. In response thereto, the Applicant filed a Replying affidavit sworn on 17<sup>th</sup> September 2025. He deponed that the application was an afterthought and made in bad faith in a deliberate attempt to delay the matter.
9. Regarding the error in the description of one of the suit properties in the order that was served upon the Respondent, which he termed

as inadvertent, he stated that his advocate had informed that Applicant's advocate of the said clerical error on 5<sup>th</sup> May 2025 and the said advocate promised to inform her client.

10. He contended that when the Applicants proceeded to deal with the suit property, they were aware that the dispute related to parcel 177.
11. He further deponed that on 7<sup>th</sup> May 2025, his advocate wrote to court to inform it of the error in the court order and they continued to prosecute the application without raising the issue of the parcel number . He added that the only issue that the Respondent raised was that the order was not enforceable as new titles had been issued, a claim which he had established to be false.
12. He maintained that the Respondent could not claim ambiguity of the order which he had blatantly disobeyed by causing and administrative transfer of the suit properties while the matter was being actively litigated in court.
13. He invoked Article 159 (2) (d) of the Constitution and urged the court to administer justice without undue regard to procedural technicalities.
14. He pointed out that under section 99 of the Civil Procedure Act the court had the power to correct clerical errors such as the one in the court order. He insisted that the said clerical error did not cause any confusion or ambiguity as the parties has all along litigated in respect of parcel numbers KOMOTHAI/KIAMBURUR/T.156 and 171.

15. He refuted the Respondent's claim that parcel no. 156 was bare land with no activity thereon and stated that they have been utilizing the land for more than 50 years.
16. He stated that the dispute had caused untold distress to the family and explained that if they signed any agreement to vacate the suit property the same was done under duress. He accused the chief and Assistant chief of having an interest in the suit properties and stated that they had facilitated the harassment of the Applicants.
17. He maintained that the Respondents were in contempt of the court order as they had interfered with parcel no. 156 which has no clerical error.
18. He concluded by urging the court to dismiss the application for review.
19. In his Further Replying affidavit sworn on 20<sup>th</sup> November 2025, he stated that on 30<sup>th</sup> September when the matter was in court the Applicants had come to court with booking forms and title deeds dated May 2025 demonstrating that no such title existed on 18<sup>th</sup> April 2025. He annexed a copy of the mutation form, copies of booking forms and registration forms in relation to the suit properties which demonstrated that the Respondents continued to process their titles as the case was pending in court in blatant disobedience of the court order.
20. The application was canvassed by way of oral submissions.

21. Having considered the Notice of Motion, supporting affidavit and rival submissions as well as the legal framework, the singular issue that arises is whether the order of 29<sup>th</sup> July 2025 ought to be reviewed or set aside on the ground that there is a clerical error in the description of one of the parcel numbers.
22. I must now examine whether the statutory and procedural framework as well as the circumstances of this case justify such intervention.
23. Section 80 of the Civil Procedure Act Cap 21 Laws of Kenya provides that:

***“Any person who considers himself aggrieved—***

***(a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or***

***(b) by a decree or order from which no appeal is allowed by this Act,***

***may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.”***

Order 45 Rule 1 of the Civil Procedure Rules, provides as follows:

***“(1) Any person considering himself aggrieved—***

***(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or***

**(b) by a decree or order from which no appeal is hereby allowed,**

**and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.”**

24. In essence, applications for review should only permitted in cases where the prescribed grounds have been established.
25. In the instant case, the application is premised on the grounds that there is an error on the face of the record.
26. It is not in dispute that the order that was served upon the Defendants had an error in the description of land parcel number KOMOTHAI/ KIAMBURU/T.171 which was inadvertently described as parcel number KOMOTHAI/KIAMBURU/T.177. Once they realized the mistake, counsel for the Defendants notified the Plaintiff’s counsel and she promised to advise her client. The Defendant’s counsel also wrote to court to amend the order. It is however not lost to the court that the error only affected the description of one of the two parcels mentioned in the court order.
27. As can be discerned from the annexures to the Further Replying Affidavit, the Plaintiffs continued to deal with the suit properties

after the injunction was issued. It is also clear that the Certificates of title were issued in May 2025 after the Plaintiffs were served with the order on 18<sup>th</sup> April 2025.

28. The submission by the Plaintiff's counsel that the process of issuance of the title had been set in Motion as soon as the Grant was confirmed in 2024 is neither here nor there because that is precisely why the application for injunction was filed. It would appear that the Plaintiffs were undeterred by the court order and the issue of the error in the description of one of the parcels has presented a perfect excuse for them to try and exonerate themselves.
29. Whereas I admit that the error is one that stares one in the face, I am not persuaded that the reason the Plaintiffs went on to process the titles is because they believed that that the parcels described in the court order were different from the parcels of land in dispute.
30. Be that as it may, counsel for the Defendant/Applicant has raised a fundamental question regarding the capacity of the Plaintiffs to institute this case. This is based on the grounds that at the time of filing this suit, the plaintiffs had not taken out a grant of letters of administration in respect of their late father's estate and therefore they lacked the locus standi to institute this suit.
31. In response to the issue of locus standi, counsel for the Plaintiffs/ Respondents contended that the plaintiffs are adults who have a right to institute proceedings in their own right.

32. I have perused the Originating Summons together with the Supporting affidavits of Hannah Wangui Mwangi Komothai and Isaac Njuguna Mwangi both sworn on 14<sup>th</sup> March 2025. The gist of the Plaintiffs' suit is that they are claiming the suit property by way of adverse possession as they claim that they have been in open, continuous, uninterrupted and elusive occupation of the suit land from 1958 to date. They also claim the suit land on the basis of a trust as the Defendant is their first cousin and the son of Karanja Njuguna Karanja (deceased) who was a brother to Eliud Mwangi Njuguna.
33. They are basing their claim on the fact that the late Eliud Mwangi Njuguna who was the husband of the 2nd Plaintiff and the father of the other plaintiffs was the brother of the defendant's father.
34. Counsel for the Plaintiffs has submitted that the plaintiffs have since obtained a grant of letters of administration.
35. To the extent that they are invoking the doctrine of trust, the Plaintiffs ought to have taken out a grant of letters of administration in respect of the estate of Karanja Njuguna Karanja (deceased). Without the said grant of letters of administration, the plaintiffs have no capacity to institute the suit.
36. In the case of **Julian Adoyo Ongunga & Another v Francis Kiberenge Bondeva (Suing as the administrator of the estate of Fanuel Evans Amudavi, Deceased, (2016) eKLR**, Mrima J held as follows:

37. *"The issue of locus standi is so cardinal in a civil matter since it runs through to the heart of the case. Simply put a party without locus standi in a civil suit lacks the right to institute and maintain that suit even where a valid cause of action subsists. Locus standi relates mainly to the legal capacity of the party. The impact of a party in a suit without locus standi can be equated to that of a court acting without jurisdiction since it all amounts to null and void proceedings. It is also worth noting that the issue of locus standi becomes such a serious one where the matter involves the estate of a deceased person since in most cases, the estate involves several other beneficiaries."*

38. In the circumstances, the application has merit and it is hereby granted in terms of orders 1, 2 and 3 of the Notice of Motion. I therefore make the following orders:

**a) The orders for conviction issued on 29<sup>th</sup> July 2025 are hereby set aside and vacated.**

**b) Considering the circumstances of this case each party shall bear their own costs.**

**Dated, signed and delivered this 3<sup>rd</sup> day of February 2026.**

.....

**J. M ONYANGO  
JUDGE**

In the presence of:

1. Ms. Wanjiku for the plaintiffs
2. Ms. Gulenywa for the Defendant.

Court Assistant: Hinga.

ORIGINAL